



FISCAL MEMORANDUM

HB 636 - SB 603

April 16, 2021

SUMMARY OF ORIGINAL BILL: Creates the *Health Benefit Plan Network Access and Adequacy Act*.

Requires a health carrier providing a network plan to maintain a network that is sufficient in numbers and appropriate types of providers, including those that serve predominantly low-income, medically underserved individuals, to ensure that all covered services to covered persons, including children and adults, will be accessible without unreasonable travel or delay and ensure that covered persons have access to emergency services 24 hours per day, 7 days per week and without unreasonable travel or delay.

Tasks the Commissioner of the Department of Commerce and Insurance (DCI) with determining sufficiency in accordance with the requirements of this section, and may establish sufficiency by reference to any reasonable criteria.

Requires a health carrier to have a process to assure that a covered person obtains a covered benefit at an in-network level of benefits, including an in-network level of cost-sharing, from a non-participating provider. The health carrier shall treat the healthcare services the covered person receives from a nonparticipating provider as if the services were provided by a participating provider, including applying the covered person's cost-sharing for the services toward any maximum out-of-pocket limit applicable to services obtained from participating providers under the health benefit plan.

Beginning July 1, 2021, requires a health carrier to file with the Commissioner of DCI, for review and approval, prior to or at the time it files a newly offered network, in a manner and form defined by the Commissioner by rule, an access plan that meets the requirements of this part.

Establishes violation of this part is a Class A misdemeanor. The proposed legislation has an effective date of January 1, 2022.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$171,700/FY21-22
\$168,500/FY22-23 and Subsequent Years

Other Fiscal Impact – An additional increase in state expenditures to the Division of TennCare may be realized as a result of this legislation, as well as a corresponding increase in federal expenditures. The extent of any increase in expenditures associated with an

increase in provider rates and paying out-of-network providers is unknown and dependent upon further action by the Department of Commerce and Insurance. Passage of the proposed legislation could jeopardize a portion or all of federal funding to the Division of TennCare received for the Medicaid program of approximately \$9,502,600,952 in FY21-22 and subsequent years if it is determined the state is noncompliant with federal law.

IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Commerce Impact – Due to multiple unknown factors, the exact impact to commerce cannot be determined.

SUMMARY OF AMENDMENTS (006804, 007276): Amendment 006804 deletes all language after the enacting clause and rewrites the bill such that the only substantive changes are to: (1) delete the requirement that a healthcare provider requesting to leave a network supply the health carrier with a list of the provider's patients that are covered by a plan of the health carrier; (2) establish that a continuity of care request is only granted if the provider agrees in writing to charge the patient as if they are in-network; (3) require a health carrier to establish a mechanism by which participating providers can confirm coverage at the time of services; and (4) establish that this does not apply to the TennCare Program or the CoverKids Program.

Amendment 007276 deletes and replaces language in the bill as amended by amendment 006804 without making any substantive changes.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

**Increase State Expenditures – \$171,700/FY21-22
\$168,500/FY22-23 and Subsequent Years**

Other Fiscal Impact – An additional increase in state expenditures to Benefits Administration may be realized as a result of this legislation, as well as a corresponding increase in federal expenditures. The extent of any increase in expenditures associated with an increase in provider rates and paying out-of-network providers is unknown and dependent upon further action by the Department of Commerce and Insurance.

Assumptions for the bill as amended:

- The requirements in the legislation could result in an increase in expenditures to the State Group Health Insurance plan if health carriers are required to raise provider rates or start paying providers that are not currently in-network. The extent of any increase in state expenditures associated with an increase in provider rates and paying out-of-network providers is unknown and dependent upon further action by the DCI.
- Based on information provided by the DCI, the proposed legislation cannot be accommodated within existing resources. The DCI will require one Examination

Director position and one Examiner position to review provider networks to ensure health carriers maintain network adequacy.

- The one-time increase in state expenditures associated with the two new positions is estimated to be \$3,200 (\$1,600 computer cost x 2 positions).
- The recurring increase in state expenditures associated with the Examination Director position is estimated to be \$101,772 (\$74,544 salary + \$19,128 benefits + \$1,400 communications + \$600 supplies + \$6,100 Administrative cost).
- The recurring increase in state expenditures associated with the Examiner position is estimated to be \$66,761 (\$44,520 salary + \$14,141 benefits + \$1,400 communications + \$600 supplies + \$6,100 Administrative cost).
- The total increase in state expenditures is estimated to be \$171,733 (\$101,772 + \$66,761 + \$3,200) in FY21-22.
- The total increase in state expenditures is estimated to be \$168,533 (\$101,772 + \$66,761) in FY22-23 and subsequent years.
- There will not be a sufficient number of Class A misdemeanor prosecutions for state or local government to experience any significant increase in fine revenue or expenditures.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Due to multiple unknown factors, such as what standards DCI will set, current coverage levels, and what new coverage would be required, the exact impact to commerce cannot be determined.
- The network adequacy requirements in the legislation could increase health care plan costs, especially if the health carrier is required to raise provider rates or start paying providers that are not currently in-network.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/vh